

DOSH DIRECTIVE

Department of Labor and Industries
Division of Occupational Safety and Health
Keeping Washington safe and working

19.25 Explosives Inspection Activities and Procedures

Date: November 5, 2010

I. Purpose

This directive provides guidance to DOSH staff on scheduling and conducting explosives inspections, and establishes guidelines for seizing explosives.

II. Scope and Application

This directive applies to DOSH Compliance Managers, Compliance Supervisors and Explosives Inspectors when scheduling and conducting explosives inspections. This directive replaces and cancels:

- WRD 19.05, Overview of Explosives Inspection Activities, issued September 18, 2006
 - WRD 19.15, Inspection Procedures Unique to Explosives Inspections, issued September 18, 2006
- A.** Only designated Explosives Inspectors, or other inspectors who have been thoroughly trained and determined to be knowledgeable in the use and handling of explosives, may be assigned to conduct inspections at explosives storage or use sites. Before an employee other than a designated Explosives Inspector conducts such inspections, the employee's supervisor and the Explosives Supervisor in Central Office must agree that the employee has the necessary training and knowledge.
- B.** When conducting explosives inspections, the Explosive Inspector must show a primary concern with those facilities and conditions which most directly relate to the safety of the public, and of workers. When applicable, and based on particular circumstances, all explosives inspections should address at least whether:
- Licenses are current
 - The blaster in charge is competent
 - Proper storage facilities are available and in use
 - Transportation of explosive material is done in a legal manner
 - The manufacture site meets applicable requirements, **and**,
 - Necessary and appropriate safety measures are in place at explosives use sites.

C. In assigning and scheduling explosives inspections, inspectors should reflect the following inspection priority:

1. Imminent danger
2. Fatality/catastrophe investigations
3. Explosives incidents
4. Complaints/referrals
5. Work sites where explosives are being used
6. Explosive magazine inspections (reflecting the following priority for such inspections):
 - a. Cancellation of storage license
 - b. Magazine moved to new location
 - c. Construction of new magazine
 - d. Annual inspection of licensed magazines and manufacturing plants
 - e. Follow-up on expired or canceled licenses
7. Programmed inspections

III. **References**

Explosives Inspectors must be familiar with the following regulations:

- Chapter 49.17 RCW, Washington Industrial Safety and Health Act (WISHA)
- Chapter 70.74 RCW, Washington State Explosives Act
- Chapter 70.77 RCW, State Fireworks Law
- All WISHA regulations and procedures with a particular emphasis on:
 - Chapter 296-52 WAC, Safety Standards for Possession and Handling of Explosives
 - Chapter 296-59 WAC, Ski Area Facilities and Operations
- Applicable IFC, NFPA, UBC, BATF, MSHA, and USDOT regulations

IV. **Background**

Several questions have been raised about the authority provided by Chapter 70.74 RCW, particularly in relation to the type and priority of inspections assigned to explosives inspectors. Questions have also been raised regarding the primary focus of explosives inspections.

Chapter 70.74 RCW, Washington State Explosive Act, authorizes the Department of Labor & Industries (L&I) to regulate all aspects of manufacturing, possession, storage, selling, purchasing, transportation and use of explosives, except as exempted under RCW 70.74.191. The Explosives Act is enforced through the mechanisms provided by Chapter 49.17 RCW, Washington Industrial Safety and Health Act (WISHA). However, the authority provided by the Explosives Act is separate and distinct from the basic worker protection provisions of WISHA. For example, worker exposure to a hazard is not necessary before the provisions of the Explosives Act can be invoked and a citation issued.

In fact, the primary concern in conducting inspections pursuant to Chapter 70.74 RCW is to ensure an appropriate level of protection is being provided to the *public*, although worker protection in relation to explosives remains a DOSH concern.

Chapter 70.74 RCW, Washington State Explosives Act, is a public safety law that requires, among other things, regular “certification” inspections of licensed explosives storage sites. Because of the unique characteristics of the Explosives Act, several standard inspection procedures described in the DOSH Compliance Manual do not apply. This directive provides guidance regarding these necessary and unique explosives inspection procedures.

V. Enforcement Policies

- A.** Under certain circumstances, DOSH Explosives Inspectors must arrange for the seizure of explosives. In cases where explosive material is illegally stored and compliance with the requirements of Chapter 296-52 WAC cannot be obtained, explosives inspectors must coordinate the seizure of the explosives with local law enforcement agencies or the Washington State Patrol Bomb Squad.

Explosives inspectors must not, under any circumstances, seize, transport or store explosive material.

- B.** When information is received that illegal explosive storage or manufacturing may exist at a private residence, a warrant must be obtained by local law enforcement. The entry must be made by local law enforcement officers and explosive inspectors must not enter the scene until local law enforcement officers have the scene under control and indicate that entry is safe.

Any documentation obtained by law enforcement officers prior to the inspector’s arrival and necessary to the inspection must be obtained by the inspector from the law enforcement agency.

***Note:** The DOSH explosives inspector and/or supervisor may request the assistance of the Office of the Attorney General in working with local law enforcement to obtain a warrant.*

- C.** Explosives Inspectors are expected to assist the explosives industry by providing consultative and technical advice. If requests for assistance require a significant commitment of time or resources, explosives inspectors should seek guidance from their supervisors regarding the appropriate balance between such efforts and their inspection activities. If requests for assistance cannot be met, they should be forwarded to the Explosives Supervisor. All technical advice and interpretive guidance must be coordinated with the Explosives Supervisor.
- D.** DOSH Explosives Inspectors must issue citations for all documented violations of Chapter 296-52 WAC. However, investigations involving potential felony charges must be closely coordinated with local law enforcement in order to avoid compromising the potential criminal charges. Whenever criminal charges are a likely outcome of explosives enforcement activity, the DOSH Explosives Inspector and Explosives Supervisor must notify the Standards and Technical Services Manager.

- E.** All magazines containing explosive material are considered active magazines. Explosives Inspectors must conduct inspections of “inactive” and other unlicensed magazines whenever evidence indicates that such a magazine is being used to store explosive material.
- F.** When an investigation suggests that suspension or revocation of an explosives license may be appropriate, the Explosive Supervisor and Standards and Technical Services Manager will make the decision regarding the recommendation and appropriate notice to the licensee.
- G.** When inspections other than magazine licensing reviews are conducted at work sites where explosives are being used and an employee/employer relationship exists, the inspector must handle the inspection in accordance with all applicable procedures outlined in the DOSH Compliance Manual.

In addition, the Explosives Inspector must request the Blaster-in-charge to produce a valid user license, ascertain the level of expertise required, and determine that the license is adequate to the situation. When violations of Chapter 296-52 WAC exist that are under the control of the Blaster-in-charge, the Blaster must be cited under Chapter 70.74 RCW. The employer must also be cited as appropriate under Chapter 49.17 RCW.

- H.** All citations resulting from investigations involving media inquiries or other high profile situations must be reviewed by the Explosives Supervisor and Standards and Technical Services Manager before they are issued.

Approved: _____



Michael Silverstein, MD., Assistant Director
Division of Occupational Safety and Health
Department of Labor and Industries